Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	CC Docket No. 00-257
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	CC Docket No. 94-129

PETITION FOR RECONSIDERATION OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) respectfully requests that the Commission reconsider its Fourth Report and Order[1] adopted in the above referenced docket, and not require (1) acquiring carriers to be responsible for any carrier change charges associated with a carrier-to-carrier sale or transfer; (2) acquiring carriers to provide advance written notice to affected subscribers where a state imposes such a responsibility on the exiting carrier; and (3) LECs administering preferred carriers freezes to *lift* freeze protection on the service(s) involved in a carrier-to-carrier sale or transfer.

As demonstrated herein, mandating that the acquiring carrier absorb all carrier change charges will (1) thwart negotiations with selling carriers, (2) nullify state rules, which may

[1] In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Fourth Report and Order, CC Docket No. 94-129 (rel. May 15, 2001).

obligate the exiting competitive local exchange carrier (CLEC) to pay some or all the carrier change charges; and (3) preclude a default acquiring carrier from obtaining recovery as a creditor from a CLEC that exits a market due to bankruptcy. Also, requiring the acquiring carrier to provide the advance written notice of the transfer to affected subscribers is unnecessary where a state already requires the exiting CLEC to do so. Further, the lifting of a preferred carrier freeze is not always necessary to effectuate a carrier-to-carrier transfer. Mechanized processes exist that allow local service providers to transfer a subscriber base with freeze protection on their accounts without actually lifting the freeze, but rather bypassing the freeze. Acquiring carriers should only be required to inform affected subscribers whether their freeze will be lifted.

I. The FCC Should Not Require Acquiring Carriers To Be Responsible For Carrier Change Charges.

In the Fourth Report and Order, the Commission concluded that the acquiring carrier should be responsible for any carrier change charges associated with a carrier-to-carrier sale or transfer because the acquiring carrier "has the billing relationship with the customer after the transfer."[2] SBC understands that the underlying goal of this requirement is to ensure that subscribers do not bear the burden of these charges due to a carrier-to-carrier transfer. This goal is both laudable and rationale for negotiated carrier-to-carrier transfers. When a customer's account is transferred to a new carrier in a negotiated transaction, it is the bargaining carriers who represent the causative factor underlying any carrier change charge. Absent their agreement to transfer the customer base, no such charges would be incurred. The requirement, however, goes too far because it eliminates carriers' flexibility to allocate the responsibility for carrier change charges amongst themselves. This could chill negotiations, as acquiring carriers may be

[2] *Id.* ¶ 25.

disinclined to negotiate to acquire certain subscriber bases if they are obligated to absorb the carrier change charges, which will result in an increased number of default transfers.

Moreover, the Commission's requirement is particularly problematic as applied to default transfers. As the Order correctly recognizes, any default carrier obligation is a creation of state law.[3] Absent the state's creation of a default carrier obligation, no carrier would be *forced* to transition subscribers to its service as a result of a CLEC's market departure.[4] In these instances, the default carrier is forced to transfer subscribers to its service pursuant to state-created obligations. There is no negotiated allocation of burdens between the carriers. The Order's failure to separately consider the circumstances surrounding default transfers may fundamentally alter the notice and financial obligations for any state-created default carrier requirements – in a manner neither envisioned by the states nor intended by this Commission.

Notably, the Commission's requirement may conflict with or nullify state rules that require the exiting CLEC to pay carrier change charges. For example, Texas PUC Subst. Rule sec. 26.113(f)(3) states, "[a]ny switchover fees that will be charged to affected customers shall be paid by the certificate holder relinquishing the certification."[5] Thus in Texas, the exiting CLEC is responsible for any carrier change charges. There is no sound public policy reason for nullifying application of this state requirement, particularly where it accompanies a state-created obligation. The exiting carrier — not the subscriber who the FCC's requirement is intended to

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[3] Fourth Report & Order ¶20.

[4] Although state tariffs would generally require any carrier to accept a request for service from a customer that complies with the terms and conditions of the carrier's tariff, the obligation to transition customers in absence of a customer request would arise solely as a result of state attempts to ensure minimal service disruptions upon the market exit of a CLEC. Notably, the extent of any default carrier obligations are not currently well-defined and are only now beginning to be explored in the various states.

[5] Texas PUC Subst. Rule §26.113(f)(3).

protect — is responsible for these costs. Further, other state commissions, including Kansas and Ohio, currently are evaluating who should be responsible for switch-over charges when subscribers are defaulted to the carrier-of-last resort. Because default carrier obligations are created by state laws, the states are best situated to determine which carrier is responsible for any switch-over charges involving default transfers. The fact that the acquiring carrier will have the billing arrangement with the customer after the transfer is not sufficient justification to foreclose any ability of the acquiring carrier to recoup some or all of the charges from the exiting carrier pursuant to state rules.

While the affected subscribers arguably are not at fault,[6] the default carrier most certainly is not at fault, but yet would be required under the FCC's rule to absorb all costs associated with the transfer without any recourse to recover such costs and little likelihood of retaining the customer.[7] Elimination of this requirement, however, could allow default carriers, who have not in any way contributed to any cost causation, to potentially recoup these costs pursuant to applicable state laws. This is particularly so in instances where a CLEC files for bankruptcy. Currently, SBC could file a claim against the exiting carrier's bankruptcy estate as a creditor to

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[6] Note that at least one state, the Missouri PUC, has held that end users must bear the risk if they are the victim of an exiting CLEC. The carrier of last resort is required to transition customers to its service if a CLEC ceases operation. The Missouri PUC has determined that in such situations, the carrier-of-last resort and the customer are innocent victims and concluded that, "[w]hen a customer chooses to accept the benefits of obtaining basic local phone service from a competitive company, they must also accept the responsibility of considering the financial stability of that competitive company. If the company with which they choose to deal is not able to provide the agreed upon service, it is the customer who must bear the risk." *See* Missouri Register, vol. 25, No.5, at 586-587.

[7] SBC's experience is that a significant number of customers defaulted to SBC have left SBC shortly after the transfer. The reality is that a former customer that previously made a conscious decision to discard SBC's service and obtain service from a CLEC is likely to do so again within a short period of time. Thus, SBC is unlikely to recoup any switch-over costs from the default customer via a long-term carrier-customer relationship.

recoup switch-over charges under various provisions of the Bankruptcy Code.[8] Indeed, SBC's operating companies are involved as creditors in at least 15 CLEC bankruptcies filed this year alone. The FCC's requirement, however, would preclude this and any other avenue of recovery. The rule punishes default carriers in these instances, and further, creates an incentive for exiting carriers not to negotiate regarding any switch-over costs.

Accordingly, SBC urges the FCC to reconsider its decision and eliminate this burdensome requirement so that acquiring carriers may pursue all available avenues to recoup carrier change charges.

II. The FCC Should Not Require Acquiring Carriers to Provide the Advance Notice Where State Rules Require the Exiting CLEC to Provide Advance Notice to Affected Subscribers.

The Commission's streamlining rules require the acquiring carrier, in all instances, to provide written notice to each affected subscriber at least 30 days prior to the transfer of the affected subscribers. SBC requests that the Commission modify this rule to require acquiring carriers to provide this advance notice, *except where a State requires the exiting CLEC to provide advance notice of the transfer to affected subscribers.* Further, without the full cooperation of the exiting CLEC, cooperation that clearly is not guaranteed in the context of a default transfer, the acquiring carrier may not possess all information necessary to give advance notice to the affected subscribers. In such instances, the exiting carrier should provide the advance written notice. SBC recognizes that state notification requirements may differ from the requirements set forth in Section 64.1120(e)(3). Accordingly, to ensure that affected subscribers are provided the requisite information, the FCC could require that the written notice, at a

[8] See Bankruptcy Code, 11 U.S.C. §101(10) for definition of "creditor," §365 relating to "executory contracts," §502 relating to filing of pre-petition claims, and §503 relating to post-petition administrative claims.

minimum, include the notification requirements set forth in section 64.1120(e)(3)(i)-(vii). Modification of this rule as proposed will not impact advance subscriber notification of the transfer, but rather will eliminate unnecessary, duplicative notice by the acquiring carrier.

III. The FCC Should Not Require LECs to Lift Freezes to Effectuate Carrier-to-Carrier Transfers Where Mechanized Systems Allow LECs to Bypass the Freeze to Make the Transfer.

In the Fourth Report and Order, the Commission requires acquiring carriers to inform affected customers in the pre-transfer notice that any existing preferred carrier freezes on the service(s) involved in the transfer will be lifted, *i.e.* eliminated, and that they must contact their local service provider if they would like freeze protection after the transfer. This, in effect, requires all LECs administering preferred carrier freezes to *lift* any freezes on services involved in the transfer to effectuate the carrier-to-carrier transfer.

The Commission adopted this requirement to ensure that subscribers with freeze protection do not lose presubscribed service for failing to remove a freeze prior to the transfer. SBC agrees that it is important that subscribers with freeze protection do not lose presubscribed service if they fail to remove the freeze in response to notice of a carrier change. SBC even supports a requirement that carriers inform affected subscribers in the pre-transfer notice how their freeze protection(s), if any, will be treated to effect the transfer. SBC, however, requests that the FCC modify its rule and not *require* LECs to lift any freeze(s) on service(s) involved in a carrier-to-carrier transfer to the extent mechanized processes or other methods allow LECs to bypass the freeze, without actually lifting the freeze, to effect the transfer. In such instances, the acquiring carrier should only be required to inform affected subscribers that their existing freeze protections will remain in place after the transfer.

SBC has implemented a mechanized process in several of its operating companies that allows the mass transfer of end users' primary interexchange carrier (PIC) or local PIC (LPIC) from one PIC and/or LPIC to another PIC and/or LPIC, without requiring SBC to individually lift or remove toll freeze protection on any end user account. Thus, in instances where a toll carrier transfers its entire subscriber base to another toll carrier, SBC can effectuate the PIC-to-PIC and/or LPIC-to-LPIC transfer without lifting the freeze. Without this mechanized process, SBC would have to manually lift freezes for every affected subscriber with freeze protection, which could prove extremely costly and time consuming for transfers involving thousands of subscribers.

Modification of the rule, as proposed by SBC, is consistent with Section 258 and serves the public interest. First, SBC's proposed modification would allow subscribers to be transitioned to another carrier without losing presubscribed service — the crux of the FCC's rationale for requiring carriers to lift the freeze. Second, subscribers would have sufficient notice regarding whether they need to contact their local service provider to reestablish any freezes. Third, subscribers would continue to have the ability to remove any freeze protection prior to and after the transfer. Fourth, SBC's proposed modification would not cause any unrequested freezes to be placed on any services, but rather would only maintain the freeze protection(s) specifically requested by the subscriber.

Fifth, SBC's proposed modification would eliminate for such subscribers the hassle of contacting their local service providers to reestablish freezes where they could be transitioned to the acquiring carrier without removal of the freeze protection. Subscribers with freeze protection likely will seek to reestablish freeze protection after the transfer, which will result in substantial calls to local service providers. These providers assuredly would have to increase staffing to

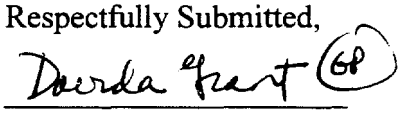
handle such requests. This is particularly problematic because local service providers typically do not charge subscribers for freeze protection, and thus would not recoup the administrative costs of handling these calls and reestablishing the freezes. Should these costs prove too significant, local service providers may begin to reexamine the efficacy of maintaining preferred carrier freeze programs. Sixth, SBC's proposed modification permits carriers, such as SBC, that have dedicated tremendous resources to develop mechanized or other processes, to effectuate carrier-to-carrier transfers as efficiently as possible, while preserving freeze protection for affected subscribers. Seventh, while freeze protection is not required to prevent slamming, it clearly is an additional safeguard against slamming. Removal of freeze protection for a large group of subscribers could result in increased instances of slamming for these subscribers.

Accordingly, SBC requests that the Commission eliminate the requirement that local service providers must *lift* freezes on any service(s) involved in a carrier-to-carrier sale or transfer. Carriers should simply be required to inform customers in the pre-transfer notice how their freeze protection will be treated. For example, if a transfer arrangement allows a carrier to utilize existing mechanized systems to effectuate the change without lifting the freeze protection, the carrier should inform the customer, as part of the pre-transfer notice, that to the extent the customer has freeze protection for the service(s) subject to the transfer, such freeze protection will remain in place after the transfer is complete. However, if for example, such a mechanized system is not utilized, the carrier should inform the customer, as part of the pre-transfer notice, that any freeze protection will be lifted, and, that they must contact their local service provider to reestablish the freeze protection after the transfer.

IV. Conclusion

For the foregoing reasons, SBC asks the Commission to eliminate its requirement that acquiring carriers absorb all carrier change charges. The Commission also should modify its rule to require the exiting carrier to provide the advance written notice where a state obligates the exiting carrier to provide such notice. Further, the Commission should modify its rules not to require LECs to lift preferred carrier freezes where mechanized or other processes exist that allow these providers to bypass, rather than lift, the freeze protection to effect a carrier-to-carrier transfer.

Respectfully Submitted,



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